

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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CACHET FINANCIAL SERVICES,
:
Plaintiff, Civil Action No. 19-CV-1181-FJS-
:
-against- CFH
:
MYPAYROLLHR, LLC; MICHAEL MANN;
VALUEWISE CORPORATION; ROSS PERSONNEL
CONSULTANTS INC.; SOUTHWESTERN
PAYROLL SERVICES INC.; ESSQUE, INC. (D/B/A
HEUTMAKER BUSINESS ADVISORS); AND DOES
1-10,
:
Defendants.
:
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**DECLARATION OF ABERASH ASFAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANTS
MYPAYROLLHR, LLC, MICHAEL MANN, VALUEWISE CORPORATION, AND
ROSS PERSONNEL CONSULTANTS INC.**

I, Aberash Asfaw, make this declaration pursuant to 28 U.S.C. § 1746. I hereby state as follows:

1. I am the President of Cachet Financial Services ("Cachet"), the plaintiff in this action, with offices in Pasadena, California. The facts set forth in this declaration are personally known to me and, if called as a witness, I could and would testify thereto.

2. I make this Declaration in support of the Plaintiff's Motion for Entry of Default Judgment Against Defendants MyPayrollHR, LLC, Michael Mann, ValueWise Corporation, and Ross Personnel Consultants, Inc. ("Motion"). Any capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion.

3. Due to the \$26 Million loss caused by Defendants' actions, Cachet had to use its own funds to cover the loss and make whole the third parties harmed by the loss. Cachet used

funds from its cash on hand, as well as borrowed an additional \$7.050 million in order to make its clients and their employers whole.

4. Specifically, Cachet used \$20 million from its operating accounts to help cover the losses. A true and correct copy of Financial Business Group Holdings' consolidated balance sheet, which reflects Cachet's cash on hand as of August 31, 2019, is attached hereto as **Exhibit H**. Cachet also then borrowed \$6.050 million from National Services, Inc. ("NSI") and another \$1 million from HB Foundation pursuant to Secured Promissory Notes executed on or about October 22, 2019. Copies of the Secured Promissory Notes with NSI and HB Foundation are attached hereto as **Exhibit I**.

5. Unexpectedly, on October 23, 2019, Bancorp gave notice to Cachet that it (1) terminated its Payroll Processing ODFI Agreement with Cachet, thus terminating Cachet's ability to originate ACH transactions, (2) froze all of Cachet's accounts (including its settlement account which had over \$100 million in it, which funds were transferred by remarketers and employers, and Cachet's operating account), and (3) swept over \$5 million from Cachet's various accounts.

6. As a result of the freeze on the accounts and Cachet's inability to process any ACH transactions, Cachet was effectively out of the ACH processing business and is no longer operating in such capacity.

7. Moreover, as a result of the freeze on Cachet's accounts by Bancorp and thus, Cachet's inability to process its ACH transactions on or around October 23, 2019, various employers and employees have filed class action claims for damages against Cachet. Generally, the class actions allege damages for fees and penalties suffered by employers and employees for overdrawn accounts, damages for being unable to pay bills, care for their families, etc., as well as more general damages for negligence, unjust enrichment, and violation of California's unfair

competition laws and the like. Cachet generally disputes these claims. There are four pending class action lawsuits.

8. Cachet was required to retain Loeb & Loeb LLP ("Loeb") to protect Cachet's interests and to assert Cachet's rights against the Defendants to recover losses Cachet incurred as a result of Defendants' fraudulent activities. Cachet has paid to Loeb the sum of \$275,000.00 in attorneys' fees which Cachet requests be added to the Judgment.

9. In addition, as a result of the actions described in the Complaint that is the subject of the pending action, which led to Bancorp's freezing of Cachet's accounts and termination of its contracts with Cachet which put Cachet out of business, Cachet was forced to file the Bankruptcy Case. In such light, Cachet paid a retainer to its bankruptcy counsel in the amount of \$250,000.00 which Cachet requests be added to the Judgment.

10. Based upon the evidence presented in the Motion, Cachet respectfully requests default judgment be entered against the Defendants, jointly and severally, as follows: (1) general damages of \$26,418,517.04; (2) consequential damages of \$27,575,000.00; (3) pre-judgment interest of \$2,154,903.92; and (4) punitive damages of \$52,837,034.08.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: Pasadena, California
February 24, 2020


Aberash Asfaw

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2020 I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

1. Southwestern Payroll Services Inc., d/b/a Southwestern Payroll
2. Essque, Inc., d/b/a Heutmaker Business Advisors

And, I hereby certify that I have mailed by the United States Postal Service the document to the following non-CM/ECF Participants, with an electronic courtesy sent via email to:

1. MyPayrollHR, f/k/a Cloud Payroll LLC
2. Michael Mann
3. ValueWise Corporation
4. Ross Personnel Consultants Inc., d/b/a Ross Consultants

c/o Micahel L. Koenig
Hinckley Allen
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Dated: Los Angeles, California
February 24, 2020

/s/ Donald A. Miller
Donald A. Miller